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No. 360

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

ARNOLD NAMROW AND LILLIAN NAMROW, husband and wife, *Petitioners*,

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

JAY C. MAXWELL AND DOROTHY N. MAXWELL, *husband and wife, Petitioners*,

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

PETITIONERS' REPLY

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November 1, 1961

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PETITIONERS' REPLY

One point proffered by the Government calls for a short reply.

The Government's Brief in Opposition (pages 7-8) may create the seriously erroneously impression that the issue litigated in the courts below was solely whether the deductions claimed do or do not come within the "educational expenses" regulation. More-

over, the Government adds a comment to the effect that the taxpayers have not questioned the validity of that regulation—citing a reference to a sentence in the opinion of the Court of Appeals (Petition, page 7a) stating: "The validity of the regulation is not disputed."

But petitioners' briefs in the Court of Appeals make it clear that, as one of their principal contentions, petitioners have contended throughout that the expenses are deductible under Section 162(a) of the Internal Revenue Code regardless of what interpretation might be placed upon the words in the "educational expenses" regulation promulgated by the Treasury.[1]

It is true that petitioners' briefs in the Court of Appeals (brief, pages 25-27; reply brief, pages 2-4 and 27-37) argued that, if it be assumed the expenses are "educational" within the meaning of the regulation, then the expenses are in any event clearly deductible under a proper interpretation of the regulation. But this was preceded by petitioners' extensive argument (brief, pages 20-25; reply brief, pages 2 and 18-27) that the expenses are clearly deductible under a proper interpretation of Section 162(a) of the Internal Revenue Code. Moreover, petitioners' motion for rehearing filed in the Court of Appeals further stated (page 3) that to construe the regulation in the manner contended for by the Government is to render the regulation invalid.

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[1] Since the briefs in the Court of Appeals do not constitute a part of the certified record, we are lodging with the Clerk of this Court one copy of petitioners' brief and one copy of petitioners' reply brief as filed in the Court of Appeals.

In this posture the case presents, clearly and squarely, the issues raised by the Petition for Certiorari—whether the expenses are deductible under the legal standards prescribed by Section 162(a), whether they are in any event deductible under the "educational expense" regulation as properly interpreted and applied, and whether an interpretation which would read the regulation as barring the deductions would bring the regulation into direct collision with the statute.

CONCLUSION

For the reasons set forth in the Petition for Certiorari, as supplemented by this Reply, the Petition for Certiorari should be granted.

Respectfully submitted,

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